

No Protest rec'd 2/2/94

Internal Revenue Service
District Director

Department of the Treasury

P. O. Box 2508
Cincinnati, OH 45201

DATE: DEC 22 1983

Employer Identification Number:

Person to Contact:

Contact Telephone Number:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

Enclosure I
Reasons for proposed denial of exempt status

Information submitted with your application indicates that you were incorporated in [REDACTED] on [REDACTED]. Your Articles of Incorporation provide that, "Said corporation is organized under [REDACTED] Chapter [REDACTED] and is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code."

Your staff consists of your three directors - [REDACTED], [REDACTED], and [REDACTED], and various volunteers. You stated that the main qualifications or experience of your staff consists of religious training and various electronic, computer and video experience. You stated that [REDACTED] devote their full time to operating and maintaining the ministry. They will be compensated for their time at about \$[REDACTED] per hour. This wage rate was determined by your three directors including [REDACTED].

On Form 1023 you indicated that this organization's primary focus will be the evangelism of the gospel of Jesus Christ and the teaching of his principles. You stated that this will be accomplished through a variety of methods including literature production and distribution, meetings, seminars and other group activities. You stated that you will also develop videos aimed at furthering your mission. You stated that this organization is fully operational and that [REDACTED] percent of your time is spent on video projects, [REDACTED] percent of time is spent on seminars, and [REDACTED] percent of time is spent on concerts.

On Form 1023 you indicated that your day to day activities include Bible studies, personal counseling, and regular office duties. We asked for more detailed information on your Bible studies and personal counseling activities but you did not provide it.

You produce videos for other Christian ministries or social organizations for discounted cost or free. As a fund-raising project you also produce videos for regular businesses or companies which should benefit these companies commercially. Your officers along with volunteers and or contracted professionals will participate in the video productions. You stated that the major beneficiaries of the video projects will be the individuals or organizations who are the subject of the video projects. You will produce corporate training videos, industrial and special occasion videos for fund-raising purposes. In [REDACTED], you began your first fund-raising video for the [REDACTED]. You received \$[REDACTED] for this project. You did not provide requested information as to whether your fee was equal to your cost, above or below cost. You did not submit copies of any contracts or agreements, although we requested them.

████████████████████

In regards to corporate training videos, you stated that a company may want to produce a video to train their employees, introduce new policies internally, or to promote their business commercially. You stated that industrial videos would be the same as the corporate training videos. Special occasion videos will be produced for individuals for weddings, anniversaries, etc. These videos will be sold above cost.

During ██████ you continued to work on a video project for the ██████ which was started prior to your incorporation. You also produced a video about the plight of state employees and their need for good health care which was aired on local cable television. We asked for a description of the subject matter and format of these videos, but you did not provide this information.

Your directors and/or invited guest speakers will conduct seminars on random dates. In ██████ you held your first conference/seminar on spiritual revival.

█████ concerts were sponsored prior to incorporation. You have not sponsored any concerts since incorporation in ██████. You stated that the concerts will involve Christian artists only who will be paid for their performances.

Publications will be offered on a donation basis, "whatever you can afford", or for free. Literature will be distributed on an individual basis, via video promotions, through other ministries, or tables at seminars, conferences, concerts, and other events. Literature will not be copyrighted. You stated that you may write pamphlets or tracts, or you may distribute books that were written by others.

You did not mention typesetting as an activity, but you reported receiving income from doing laser typesetting.

Your facilities are located in the basement of ██████ residence. You stated that ██████ provides facilities at no charge.

Financial information provided indicates that you received \$█████ from ██████ which included a secured loan of \$█████ and a \$█████ donation. You received \$█████ for the video project for ██████, and you received \$█████ for typesetting. Receipts from a newsletter totaled \$█████ and you received \$█████ in contributions. Expenditures include \$█████ for video hardware, \$█████ for salaries, \$█████ for office renovation, and \$█████ for other expenses.

You stated that net profits will be used for funding future projects, donations to other ministries, and purchasing new equipment.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of corporations, and any community chest, fund, or foundation organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations provides that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes specified in section 501(c)(3) of the Code. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states that the term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), C.B. 1945, 375, the Supreme Court determined that while some activities of the organization were exempt, a substantial purpose was to promote business, and thus the organization was not operating exclusively for exempt purposes.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), a corporation organized to offer consulting services to nonprofit organizations was denied exemption. The corporation was not operated exclusively for charitable, educational, or scientific purposes. The corporation's primary purpose was to operate a commercial business producing profit since its services were in competition with commercial businesses. In addition, the corporation's financing did not resemble a tax exempt organization. It did not solicit voluntary contributions from the public and its only source of income was from fees which were set high enough to recoup all projected costs and which produced a substantial net profit. Another negative factor was the corporation's failure to limit its clientele to organizations which were themselves exempt under section 501(c)(3) of the Code. The Court concluded that it was unable to find that the corporation's primary purpose was educational, scientific or charitable, rather than the conduct of an ordinary commercial consulting enterprise in competition with other commercial firms.

Revenue Ruling 72-369, 1972-2 C.B. 245, describes an organization that was formed to provide managerial and consulting services for nonprofit organizations exempt from Federal income tax under section 501(c)(3) of the Code to improve the administration of their charitable programs. The organization entered into agreements with unrelated nonprofit organizations to furnish managerial and consulting services on a cost basis. The services consisted of writing job descriptions and training manuals, recruiting personnel, constructing organizational charts, and advising organizations on specific methods of operation. Receipts of the organization were from services rendered. Disbursements were for operating expenses.

In Revenue Ruling 72-369 the Internal Revenue Service determined:

An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the "operational test" the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code and the applicable regulations.

Providing managerial and consulting services on a regular basis for a fee is trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

Accordingly, it is held that the organization's activities are not charitable and therefore the organization does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

To qualify for exemption under section 501(c)(3), you must operate "exclusively" for exempt purposes, such as charitable or religious purposes. If the facts and circumstances indicate that your primary purpose is the operation of an unrelated trade or business, such as producing videos for commercial purposes, then you are not operated exclusively for exempt purposes. It is our opinion that your organization is similar to the organizations described in B.S.W. Group, Inc. v. Commissioner and in Revenue Ruling 72-369.

You do not meet the operational test because you are not primarily engaged in activities which accomplish exempt purposes within the meaning of section 501(c)(3) of the Code. You do not qualify for exemption from Federal income tax under section 501(c)(3) of the Code. We are also of the opinion that you do not qualify under any other section of the Code.